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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

In re H.Y. et al., Persons Coming Under
the Juvenile Court Law.

MENDOCINO COUNTY HEALTH
AND HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

C.S.,

Defendant and Appellant.

A155471

(Mendocino County
Super. Ct. Nos. SCUK-JVSQ-16-
14878, 16-14879, 16-17494, 16-17493,
16-17492)

C.S. (Mother) appeals after the juvenile court: (1) denied her petitions to modify an order terminating family reunification services; and (2) terminated her parental rights as to four of her five children under Welfare and Institutions Code¹ section 366.26. Mother contends the juvenile court abused its discretion when it refused to continue the hearing on her petitions to modify and concluded that no change of circumstances existed to justify modification. Mother further contends the juvenile court erred in concluding that the beneficial parent-child relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)) did not apply in this case. Finally, Mother argues the juvenile court erred when it failed to appoint separate counsel among the children due to

¹ All further statutory references are to this code unless otherwise stated.

an actual conflict of interest between the children who wanted to be adopted and those who wished to be returned to Mother's care. We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Prior Dependency Case

In a prior dependency case filed in 2006, Mother's two oldest children, H.Y. and C.Y., were removed from her care after the juvenile court sustained a petition alleging parental substance abuse, general neglect as to both children, and sexual abuse as to H.Y. The children were placed in foster care for a time but were returned to Mother in 2008.

B. Section 300 Petition

In June 2016, the Mendocino County Health and Human Services Agency (Agency) filed a petition under section 300, subdivisions (b) and (g),² alleging Mother's five children—H.Y., C.Y., S.R., T.S., and J.S.—were subjected to ongoing neglect and placed at risk of serious physical harm. The Agency alleged Mother had a chronic history of methamphetamine and marijuana abuse; she was frequently unavailable to pick the children up from school and from the bus stop; she failed to supervise the children; she did not provide the children with basic hygiene, clean clothes, and a safe home; she exposed the children to drug users and criminals; Mother was in an on-again-off-again domestic violence relationship with the alleged father of T.S.; and all of the children's alleged fathers had criminal histories.³

At the detention hearing, the juvenile court appointed one attorney to represent all five children and found a *prima facie* case requiring detention. The children were removed from Mother's custody and placed in three licensed foster homes: S.R., T.S.,

² Under these provisions, a court may exercise dependency jurisdiction over a child who is at risk of "serious physical harm" because of a parent's abuse or inability to provide adequate supervision, care or protection (§ 300, subd. (b)), and where the child has been left without any provision for support (*id.*, subd. (g)).

³ In particular, the petition alleged Michael F. (alleged father of S.R.) had an extensive pattern of criminal behaviors including violent crimes, and Cameron H. (alleged father of J.S.) had a pattern of drug-related arrests.

and J.S. were placed together in one home, and H.Y. and C.Y. were each placed in separate homes.

C. Jurisdiction and Disposition

In its jurisdiction report, the Agency detailed Mother's long history with substance abuse, her having first tried methamphetamine at age 8, and her continuing to use it on and off over the years. Although she had obtained treatment in 2006 and was clean for approximately four years, she started using methamphetamine and alcohol regularly in 2011. In November 2015, Mother and the alleged father of T.S. began using methamphetamine together. She quit using methamphetamine in January 2016, but started again in April 2016. She appeared to be under the influence of substances during the Agency's supervised visit in July 2016.

The Agency further reported that Mother's supervised visits with the children were "chaotic and high energy," with Mother struggling to give each child attention. At times, Mother engaged in "inappropriate play (wrestling)." The children appeared to have a close relationship with Mother and benefitted from the visits. They hugged each other and said I love you and miss you, and the children sometimes cried at the end of visits.

At the combined jurisdiction and disposition hearing in November 2016, the juvenile court found the core allegations of the petition to be true and declared the children to be dependents of the court. The Agency was ordered to provide family reunification services to Mother, but not to the children's fathers. Mother was ordered into family dependency drug court (FDDC), and offered various services including Substance Use Disorders Treatment (SUDT), parenting classes, Family Empowerment Group (FEG), domestic violence programs, and individual counseling.

D. Six-Month Review

In its six-month review, the Agency reported that Mother had two relapses with methamphetamine and alcohol in January 2017. She took responsibility by self-reporting the incidents, identifying her triggers, and reengaging in her services. The Agency also reported a situation in January 2017 involving inappropriate physical contact by Mother

with C.Y. during a supervised visit. Mother dismissed the incident as “ ‘horseplay’ ” but a social worker described Mother’s actions as “a threat.”

At the six-month review hearing in April 2017, the juvenile court found that Mother had not made significant progress towards her case plan objectives. The court granted six more months of family reunification services.

E. Twelve-Month Review

In its 12-month review, the Agency reported that Mother had tested free from all substances since January 2017 and was in phase IV of FDDC. She also participated in FEG, a domestic violence program, and a parenting class. She continued visiting the children, who were excited and happy to see her. The Agency remained concerned about Mother’s relationship choices and her only beginning to demonstrate progress in her drug treatment plan. The Agency also noted Mother was living in her father’s home, which was an unhealthy environment for her and the children.

At the 12-month review hearing in August 2017, the juvenile court ordered an additional six months of family reunification services. The juvenile court found that Mother had made significant progress, and that there was a substantial probability the children would be returned to her by the 18-month hearing.

F. Eighteen-Month Review

Mother relapsed again, however. In its 18-month status review, the Agency reported that Mother had missed a random urinalysis test in August 2017 and tested positive for amphetamines and methamphetamines on October 2, 2017. On October 12, 2017, Mother provided a subsequent test that was positive for a diluted specimen. Despite the positive drug tests, Mother “vehemently denied” using substances. The Agency reported that Mother had been phased back to Phase III of the FDDC program, and had received a total of 11 sanctions to date.

The Agency further noted that during supervised visits with the children, Mother sometimes took on a passive role, did not intervene in rough play, and did not respond to her children when they were hurt or in a situation where they could get hurt. The children’s relationship with Mother was similar to a sibling bond rather than a parent-

child relationship, and H.Y. and C.Y. showed “parentified” behaviors towards their younger siblings. Mother also had not been able to demonstrate her ability to set boundaries with the children consistent with her role as a parent, specifically in regards to H.Y. and C.Y., who were seen lecturing her.

The Agency additionally reported that Mother did not fully comply with the parenting component of her case plan, and she had not met the goals of the FDDC program, i.e., to stay clean and sober, find and maintain safe housing, and focus on bonding with her children. Mother had also not complied with her case plan objectives regarding domestic violence, as she had not demonstrated progress in a county-certified domestic violence prevention plan. Although Mother had made good strides toward her treatment goals in therapy, she did not meet the minimum 90 percent attendance requirement for FEG.

The Agency also emphasized that Mother was not attending to or meeting the mental, emotional, or behavioral health needs of C.Y. Specifically, Mother was scheduled to meet with C.Y.’s treatment provider but failed to do so, and she missed a second scheduled appointment with no explanation.

There was also uncertainty regarding Mother’s housing situation after the unexpected death of her father, and she had not made efforts to find alternative living arrangements. Nor had she made use of her “Parent Partner,” a support system put in place to aid her in navigating challenging situations. Mother also continued to engage with friends and family members that could negatively affect her sobriety, including her sister. The Agency also believed Mother was involved with an individual (unidentified in the Agency’s report) who was not clean and sober, but Mother was not forthcoming about this relationship and was dismissive of the Agency’s concerns.

In light of Mother’s relapse and lack of progress towards her case plan objectives, the Agency recommended termination of family reunification services and requested scheduling of a section 366.26 permanency planning hearing.

In an addendum report, the Agency notified the court that Mother did not show up for FDDC on November 8, 2017, resulting in the issuance of a bench warrant. The

FDDC team recommended a twelfth sanction against Mother for positive methamphetamines tests on October 20 and 23, 2017, a thirteenth sanction for missing FDDC on November 8, 2017, and a fourteenth sanction for a diluted test on November 8, 2017. Mother had not been in compliance with FDDC services since October 2, 2017, and was returning to the first phase of her program.

At the 18-month review hearing on December 12, 2017, Mother requested another six months of family reunification services, arguing that she made significant progress before her father's unexpected death led to "a bit of a slip-up." Counsel for the children expressed concern about Mother's relapse but supported Mother's request for an additional six months of reunification services due to the two oldest children's "very strong bond" with Mother and their desire to return to her. H.Y. addressed the court and read poems that she had written.

The juvenile court found that Mother's substance abuse issues were of a "fairly longstanding duration and continued to reoccur and cause her problems in her parenting and in her life generally." The court also found that Mother's progress in reunification services was "mixed"; there was continued instability regarding housing; she had continued to associate with people who were not conducive to living a safe and sober lifestyle; and she did not show insight about her relapse. The juvenile court terminated family reunification services and scheduled a permanency planning hearing (§ 366.26).

G. Mother's Section 388 Petitions

In February 2018, Mother filed several petitions and amended petitions under section 388 seeking to modify the December 2017 order terminating family reunification services. Mother requested that H.Y. and C.Y. be returned to her with family maintenance services, and that reunification services be reinstated for the other three children.

The Agency initially supported the return of H.Y. and C.Y. to Mother. In an addendum report, however, the Agency changed its recommendation, arguing that Mother had not changed her circumstances, and that returning H.Y. and C.Y. to her was not in their best interests. The Agency believed Mother's relapse rate was high.

Moreover, she had minimally demonstrated new skills and behaviors, inconsistently engaged in case plan objectives, and showed detachment and minimal commitment to the process. The report also noted that Mother continued to have a difficult time supervising her children during visits and did not assume a parental role of setting appropriate boundaries.

At the March 2018 hearing, the juvenile court denied Mother's petitions, finding she did not adequately show a change of circumstances.

Thereafter, in June 2018, Mother filed a second round of petitions for modification, seeking family maintenance services for all five children. Mother alleged that she continued to have positive interactions with her children, continued with mental health care even after termination of services, completed SUDT, and was attending Narcotics Anonymous (NA) and Alcoholics Anonymous (AA) meetings. The petitions further alleged that two of the five children had expressed a desire to return to Mother. Attachments to the petitions included a graduation certificate from SUDT and NA/AA attendance sheets from March 14, 2018 through May 11, 2018, showing that Mother attended meetings approximately two to three times per week.

In response to Mother's petitions, the Agency filed an addendum report on June 27, 2018. According to the Agency, on May 29, 2018, police officers went to Mother's residence to do a probation search on her brother. After no one responded to the officers' knocking and announcing at the front door, the officers forcibly entered the home to find Mother "in the company of several fugitives from the law" and "associating with adults who present significant danger to herself and her children." One of the individuals at Mother's residence was Michael F. (alleged father of S.R.), who was found in possession of a firearm and was arrested for outstanding warrants. According to the police report, Cameron H. (alleged father of J.S.) was also seen in Mother's home that day.

H. Agency's Section 366.26 Report

In its section 366.26 report, the Agency stated that Mother continued to attend supervised visits with the children. Although they engaged in very loving and

appropriate behavior, there were “numerous incidents” when Mother did not assume a parental role or set healthy boundaries. Mother was more of a “playmate, but not a safe and protective parent.”

S.R., T.S., and J.S. expressed their desire to be adopted by the family they had been with since August 2017. C.Y. wished to be reunited with Mother, but alternatively wanted to be adopted by the family he had been with since July 2017. H.Y. (age 14 at the time) wanted to be reunited with Mother and did not want to be adopted. The Agency found that H.Y. was not adoptable, as Mother had maintained regular visitation and contact with her, and H.Y. would benefit from continuing their relationship. The Agency determined that C.Y., S.R., T.S., and J.S. were adoptable and their caregivers wanted to adopt them. The Agency recommended that Mother’s parental rights be terminated and adoption be identified as the permanent plan for C.Y., S.R., T.S., and J.S. For H.Y., the Agency recommended a permanent plan with the specific goal of long term foster care.

I. Hearings and Appeal

On July 25, 2018, the juvenile court held a combined hearing on Mother’s petitions for modification (§ 388) and permanency planning for the children (§ 366.26). The court proposed that the parties try to complete the section 388 hearing in 30 minutes and return the following day for the permanency planning hearing. Mother testified she had not missed any of the supervised visits with her children, and the visits were “good” in that “they’re playful and – the kids are kids. We play and—play. That’s all we really have time for.” She further testified that she graduated from the SUDT program, from which she learned “how to deal with people” and “[h]ow to be polite. How to be around people.” She clarified that by “people,” she meant “drug addicts,” and that she learned “to be around” them “[j]ust in the public.” She further testified that she learned to have a group of people to call if she was having a hard time, but she identified only her mother and sister as part of her support group and testified she had not called any individuals from SUDT or NA in the past. As for her parenting skills, Mother testified that she learned to “talk to [her] kids instead of, like, yelling at them.”

Mother further testified she had had negative drug tests for the prior six months and attended weekly therapy for help with her drug use, relationships, and parenting skills. She testified she learned to “say no” to people if necessary to keep her children safe. She further testified she learned to “keep people away from me that I’m not supposed to be around,” including the children’s fathers, and anyone using drugs. Mother further testified she had been attending NA/AA meetings “once a week now” and intended to engage in NA/AA for life. She admitted to having drug relapses in January and October 2017, but believed she would be able to maintain her sobriety because she wanted to be with her children.

Mother confirmed that two of the children’s fathers were at her home during the encounter with law enforcement. She attempted to explain that one of the fathers (whom she did not identify by name) arrived unexpectedly after being released from prison, and she asked her friends Adam, Cameron, Michael, and Tink to come over because she did not want to be alone with him. Mother also testified that one of her children’s fathers came to give her a tattoo, and she was not aware of the gun in his backpack. When asked what she would do to prevent an incident like this from happening again, Mother responded, “No backpacks and no bicycles [¶] . . . [¶] . . . [b]ecause usually the people riding bicycles with their backpacks are not ones I need to be around right now.” Mother also testified that “CPS” told her she was “not supposed to” associate with the friends who were at her house that day. The juvenile court stopped Mother’s testimony and ordered her to return the following day.

The next day, July 26, 2018, the matter was called and continued again to August 21, 2018. Mother did not appear for that hearing. Her counsel, Lindsay Peak, told the juvenile court she had reminded Mother of the continued hearing date and did not know why Mother was absent. Peak surmised, “I think it was just a long time ago and [Mother] forgot.” Peak requested a continuance on the grounds that she needed the testimony of Mother as well as the children, who were also not present, but the attorneys for the Agency and the children objected. The juvenile court denied the request, finding there had been no showing why Mother was not present. The court also denied Mother’s

section 388 petition, concluding her prior testimony did not justify the requested modification.

The juvenile court then moved forward with the section 366.26 hearing. After hearing from counsel, the court terminated Mother's parental rights and identified adoption as the permanent plan for C.Y., S.R., T.S., and J.S. The court did not terminate Mother's parental rights as to H.Y. and identified guardianship as the permanent plan for her.

Mother appealed.

DISCUSSION

A. Mother's Request for Continuance

Mother argues the juvenile court abused its discretion in denying her counsel's oral request to continue the August 21, 2018, hearing. She contends there was good cause for a continuance because she consistently attended the prior hearings, and there was no evidence a continuance would have been contrary to the children's interests.

A juvenile court may continue any hearing under the juvenile court law beyond the time limit within which the hearing is otherwise required to be held, so long as the continuance is not contrary to the interests of the minor. (§ 352, subd. (a)(1).)

"Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance." (*Id.*, subd. (a)(2).) A noticed motion, with declarations detailing the specific facts supporting the continuance, is ordinarily required, but the court may consider an oral motion upon a showing of good cause. (*Id.*, subd. (a)(3).) A ruling on a request for a continuance is reviewed for abuse of discretion. (*In re Elijah V.* (2005) 127 Cal.App.4th 576, 585.)

We find no abuse of discretion by the juvenile court in denying the oral continuance request of Mother's counsel, Peak, as Mother simply did not show good cause either for her failure to bring a noticed motion, or for her nonappearance at the August 21 continued hearing. It is undisputed that Mother knew of the continued hearing date, and Peak's belief that Mother simply forgot about the hearing was hardly good

cause for a continuance. That Mother consistently attended prior hearings did not explain her failure to appear on the continued date. Nor did the children's absence at the August 21 hearing constitute good cause for a continuance, as there was nothing in the record indicating they were called to appear.

Even if we assume error, it was harmless. (*In re Celine R.* (2003) 31 Cal.4th 45, 60 (*Celine R.*) [applying harmless error test in dependency matters].) The record is devoid of any indication of what additional testimony Mother would have given had the matter been continued or how it is reasonably probable her further testimony would have changed the result.

B. Mother's Petitions for Modification

Mother argues the juvenile court abused its discretion in denying her modification petitions because she demonstrated by a preponderance of the evidence that there were changed circumstances and that granting her petitions would have served the best interests of the children.

Section 388 permits a parent to petition for modification of a prior order in a dependency matter "upon grounds of change of circumstance or new evidence." (§ 388, subd. (a)(1).) "The parent bears the burden of showing both a change of circumstance exists and that the proposed change is in the child's best interests." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47 (*Casey D.*)) In this regard, the parent must show *changed*, not *changing*, circumstances. "A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests." (*Id.* at p. 47.) We review the decision of the juvenile court for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

Mother contends she demonstrated the following changed circumstances: she visited the children consistently and regularly; she continued with mental health care; she completed SUDT; she attended NA/AA meetings and weekly therapy to address her drug use, parenting skills and relationships; she consistently tested negative for substances for

six months prior to the hearing; and she learned not to associate with people who negatively influenced her. Mother further argues that reinstating family maintenance services was in the children's best interests because they had a strong and loving bond with her, and H.Y. and C.Y. expressed their desire to return to her.

We find no abuse of discretion. The juvenile court based its decision to terminate parental rights on the longstanding duration and continued reoccurrence of Mother's substance abuse, the problems it caused in her parenting and life in general, her continued association with people who were not conducive to living a safe and sober lifestyle, and her lack of insight into her most recent relapse. These circumstances had not changed. In spite of her testimony that she had learned from her services and therapy to avoid and "say no" to people who were not conducive to living a safe and sober lifestyle, Mother continued to interact with such individuals (including two of her children's fathers) within her home just a few weeks before the scheduled hearing on her petitions. Her testimony that she had stopped associating with these individuals because "CPS" said she was "not supposed to," and that she would avoid people with backpacks and bicycles in the future showed a lack of insight into the actual problems underlying her relationship decisions and how they hindered her progress towards providing a stable home for herself and the children.

As for Mother's struggles with substance abuse, we applaud her efforts to stay sober, but we cannot say the juvenile court abused its discretion in finding her circumstances to be unchanged. This was Mother's second dependency proceeding since 2006 involving allegations of substance abuse, and she had multiple relapses in 2017. She characterizes the October 2017 relapse as a "slip-up" attributable to the death of her father, but the juvenile court could reasonably have viewed it as consistent with her history. And unlike her prior relapse in January 2017, Mother did not take responsibility after the positive drug tests in October. Rather, she denied using substances and missed drug court appearances, resulting in sanctions and reversion in the FDDC program. Although Mother testified that she consistently attended NA/AA meetings and had a support system around her, she admitted she had not called anyone from SUDT or NA for

support, and the evidence suggested a decline in the frequency of her attendance at NA/AA meetings. On this record, the juvenile court acted within its discretion to deny modification.

C. Beneficial Parent-Child Relationship Exception

Mother argues the order terminating her parental rights must be reversed because there was compelling evidence that the beneficial parent-child relationship exception (§ 366.26, subd. (c)(1)(B)(i)) applied, and that termination of parental rights would be detrimental to the children.

“ ‘Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability.’ ” (*Celine R.*, *supra*, 31 Cal.4th at pp. 52–53.) “ ‘Adoption is the Legislature’s first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.’ ” (*Id.* at p. 53.) “Once the court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1). [Citation.] An exception to the adoption preference applies if termination of parental rights would be detrimental to the child because the ‘parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.’ ” (*In re C.F.* (2011) 193 Cal.App.4th 549, 553, citing § 366.26, subd. (c)(1)(B)(i).)

To overcome the statutory preference for adoption, Mother must prove “she occupies a parental role in the child’s life, resulting in a significant, positive emotional attachment of the child to the parent.” (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1007 (*Valerie A.*)). “The significant attachment from child to parent results from the adult’s attention to the child’s needs for physical care, nourishment, comfort, affection and stimulation.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)). “The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs are some of the variables which

logically affect a parent/child bond.” (*Id.* at pp. 575–576.) We review a juvenile court’s order on the beneficial parent-child relationship exception for substantial evidence, and we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. (*Id.* at p. 576.)

There is no dispute Mother maintained regular visitation and contact with the children. The issue here is whether Mother sustained her burden to prove that the termination of parental rights would be detrimental to the children due to the existence of a beneficial parental relationship. We conclude she did not. To meet this burden, Mother was required to show that she “occupie[d] a parental role” resulting in significant, positive, emotional attachments. (*Valerie A.*, *supra*, 152 Cal.App.4th at p. 1007.) But Mother’s evidence that she was able to play with the children, feed them, talk to them about school, and spend time together merely showed frequent and loving contacts, which is insufficient to establish the existence of a beneficial parental relationship. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643 (*Marcelo B.*).) In addition to the sustained allegations of Mother’s neglect and lack of supervision over the children caused by her history of substance abuse, there was substantial evidence that Mother was repeatedly unable to assume a parental role and was not adequately attentive to the children’s needs. There continued to be chaos and disorder in the supervised visits, and Mother’s testimony that she learned to talk, not yell, at the children did nothing to address the Agency’s consistent concerns that Mother did not establish proper boundaries or take on an active parental role. Meanwhile, C.Y., S.R., T.S., and J.S. were benefitting from their placements with caregivers, and the three youngest children expressly preferred adoption. Although C.Y.’s preference was to be reunited with Mother, he accepted adoption with his current caregivers as an alternative, and the evidence suggested he did not have the same degree of attachment with Mother (or vehement objection to adoption) as H.Y. did. As children’s counsel stated at the permanency planning hearing, C.Y. was “thriving” with his current family. Viewed in the light most favorable to the ruling, there was substantial evidence supporting the juvenile court’s finding that Mother’s loving

relationship with the children did not outweigh the benefits to them from a permanent and stable home. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

Mother points out that the instant case, like others applying the parental relationship exception, involves older children who have spent most of their lives with their natural parent. (See, e.g., *In re Scott B.* (2010) 188 Cal.App.4th 452, 471; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689.) But the children's ages are only one factor. Also relevant are the considerations we have discussed above, as well as the positive or negative effects of the interactions between Mother and the children, and whether Mother provides for any particular needs the children may have. (*Autumn H.*, *supra*, 27 Cal.App.4th at pp. 575–576.) The evidence here showed that Mother's inability to provide safe and protective parenting had negative effects on her interactions with the children. Her continuing struggle with substance abuse and personal relationships—and the threat these issues would pose for the children while in her care—further undermined her claim of a relationship that is so beneficial to the children's well-being that it outweighs the benefits of a stable home with adoptive parents. And Mother failed to show that maintaining the parental relationship was necessary to address any of the children's particular needs. Mother presented no evidence addressing the Agency's claim that she had failed to participate in C.Y.'s mental, emotional, or behavioral treatment.

Based on these facts, and viewing the evidence in the light most favorable to the ruling, we conclude substantial evidence supports the juvenile court's determination that Mother did not meet her burden of proving the existence of a beneficial parental relationship with C.Y., S.R., T.S., and J.S. that supported application of the beneficial parent-child relationship exception. (§ 366.26, subd. (c)(1)(B)(i).)

D. Conflict of Interest

Mother argues the juvenile court committed reversible error when it failed to appoint separate counsel for the children in light of what she asserts was an actual conflict of interest existing among them. According to Mother, the children's divergent interests required their attorney to advocate a course of action for the three younger children (adoption) that had adverse consequences for the course of action sought by the

two older children (reunification with Mother). Additionally, Mother contends, separate counsel would have opposed termination of parental rights under the sibling relationship exception (§ 366.26, subd. (c)(1)(B)(v)).⁴

As the Agency points out, Mother raises this argument for the first time on appeal, and the general rule is that a party is precluded from urging on appeal any point not raised in the trial court. (*In re Aaron B.* (1996) 46 Cal.App.4th 843, 846; *In re Katrina W.* (1994) 31 Cal.App.4th 441, 448 [parents forfeited conflict of interest argument by not raising it in juvenile court].) Mother responds that even without an objection below, the juvenile court had a duty to appoint separate counsel if it knew or reasonably should have known of a possible conflict of interest. (See *People v. Bonin* (1989) 47 Cal.3d 808, 836 [recognizing court must inquire and take appropriate responsive action where defendant sought representation by counsel who had previous contact with witness in defendant's case].)

Whether or not Mother's failure to raise the conflict of interest issue in the proceedings below forfeits its assertion here, her failure to develop an adequate evidentiary record compels rejection of the claim on appeal. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574 [appellant's burden to show error by adequate record].) Standing alone, the fact that the children had different potential permanent plans did not demonstrate an actual conflict of interest on counsel's part. (*In re T.C.* (2010) 191 Cal.App.4th 1387, 1391 (*T.C.*), citing Cal. Rules of Court, rule 5.660(c)(1)(C)(v).) And Mother cites nothing in the record indicating that any of the children opposed the adoptions of the youngest four children on sibling relationship grounds. Simply put, there was nothing putting the juvenile court on notice that counsel for the children labored under a possible or actual conflict.

⁴ We will assume for the sake of argument that Mother has standing to assert a claim of conflict of interest among the children based on the sibling relationship exception to termination of parental rights. (See *In re Candida S.* (1992) 7 Cal.App.4th 1240, 1252 [parental standing to assert child's right to independent counsel]; *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 948–951 [parental standing to assert sibling relationship exception].)

Moreover, Mother did not develop an evidentiary record regarding the nature and extent of the siblings' relationships—i.e., whether and for how long they were raised in the same home, whether they had shared significant common experiences and close and strong bonds—that would support a “compelling reason” (§ 366.26, subd. (c)(1)(B)) to deny the youngest four children the stability and permanence of adoption. And we do not infer a detriment simply because adoption would result in the separation of the siblings. (*In re Hector A.* (2005) 125 Cal.App.4th 783, 794.) Given the absence of evidence showing that adoption would detrimentally interfere with significant sibling relationships among the children, Mother fails to establish any prejudicial error on the part of the juvenile court in allowing children's counsel to represent all five children.

DISPOSITION

The orders denying the section 388 petition and terminating parental rights are affirmed.

Fujisaki, Acting P. J.

WE CONCUR:

Petrou, J.

Wiseman, J. *

A155471

* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.